

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA	)	
	)	2:05-CR-0121-RCJ-RJJ
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
ROBERT DAVID KAHRE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

This matter comes before the Court on Defendant Robert Kahre's Motion for Reconsideration and Clarification of January 5, 2007, Order Regarding Motion in Limine to Preclude Defense Based Upon Gold and Silver U.S. Coins. (#695.) Several Defendants' Motions for Joinder are also before the Court.<sup>1</sup> The Court has considered the Motion, the pleadings on file, and oral argument on behalf of the parties and hereby issues the following Order.

**BACKGROUND**

Defendants in this case have been charged with several crimes including willful failure to collect or pay over withholding taxes, interfering with the administration of the Internal Revenue Service, and conspiracy to evade or defeat any tax or payment. Defendants

---

<sup>1</sup>Several Defendants have filed Motions for Joinder to Defendant Robert Kahre's Motion: Defendants Alexander Loglia (#698); Lori Kahre (#762); Joel Axberg (#778); Heidi Rasmussen (#806); John Kahre (#906); Ron Ruggles (#1022); and Debra Rosenbaum (#1113).

1 have engaged in a boycott of the federal reserve system. In accordance with such boycott,  
2 Defendants conduct their business dealings with United States Department of Treasury  
3 (“Treasury”) gold and silver coins. These coins have a face value far lower than their fair  
4 market value. Defendants regularly purchase these coins from dealers at the listed fair market  
5 value price. Defendant Robert Kahre pays those working in his business with these coins.  
6 Although the coins’ fair market value far exceeds their face value, Defendants report income  
7 at the face value amount.

8 Defendant Kahre asks this Court to reconsider/clarify its January 5, 2007, Order. In  
9 that Order, the Court stated the following:

10 [B]ecause the law clearly holds that the coins’ fair market value was  
11 reportable income, they cannot argue that the law did not require them to  
12 report the difference between the coins’ face and fair market values or that the  
13 tax law is somehow unconstitutional. Accordingly, the Court will not allow  
14 Defendants to present any arguments that the law allows them to exclude from  
15 income the coins’ fair market values or to otherwise argue what the relevant  
16 tax law holds. Defendants may only present a good faith defense that they  
17 believed they could report the income as they did for the limited purpose of  
18 negating the relevant mens rea requirement, but Defendants cannot argue that  
19 their belief was actually correct.

20 (#237, 2:05-cr-120.) Defendants ask this Court to reconsider these statements or to clarify  
21 the scope of the Order. Specifically, Defendants argue that the Court must allow them to  
22 introduce all “evidence of what they thought the law was and the legal materials which they  
23 claim support their beliefs.” (#695 at 2.) Defendants also filed numerous replies in which  
24 they argue that the law does in fact allow them to report income at the coins’ face value and  
25 not the fair market value. While their original Motion asked for a clarification or  
reconsideration, Defendants also argue that Congress has not authorized the Courts or the  
Treasury to tax these coins at their fair market value.

## DISCUSSION

### I. Defendants Must Report Income at the Coins' Fair Market Value

Courts have consistently held that when the fair market value of legal tender exceeds its face value, such legal tender is property other than money, and thus taxpayers must value that legal tender at its fair market value. *Cordner v. United States*, 671 F.2d 367, 368 (9th Cir. 1982); *Joslin v. United States*, 666 F.2d 1306, 1307 (10th Cir. 1981). This result is unaffected by the fact that such coins may still be used as legal tender at their face value. *Cordner*, 671 F.2d at 368. Defendants admit the coins at issue in this case have a fair market value in excess of their face value.

Some courts have distinguished between currently circulating legal tender and legal tender not in circulation. For example, in one Ninth Circuit case the court held that coins which were not currently circulating legal tender were property to be valued at their fair market value for purposes of section 1001(b). *Cal. Fed. Life Ins. Co. v. Comm'r*, 680 F.2d 85, 86-88 (9th Cir. 1982). Defendants argue the coins at issue are currently circulating, and thus the Court must find that Defendants were required to report the coins' face value as income, not the fair market value. Both Defendants and the Government proffer different definitions for the term "circulating." Neither party disputes that coins such as the penny, nickel, dime, or quarter qualify as currently circulating coinage. However, the Government argues that the gold and silver coins in this case differ from the commonly used penny, nickel, etc., while Defendants basically claim they do not. As Defendants note, no case has defined "circulating" with regards to the cases distinguishing between circulating and non-circulating coins. Indeed, the Court could find only one case that has directly examined the coins at issue. *See Smith v. Comm'r*, 75 T.C.M. (CCH) 2173 (1998). In *Smith*, the tax court held that taxpayers were required to report the coins at their fair market value. *Id.* at \*10-\*11.

1 The facts in this case do not require a different result. Defendants argue that the tax court  
2 erroneously noted that the American Gold Eagle coins were not currently circulating.  
3 However, this argument assumes the correct definition for circulating is Defendants'  
4 definition. Some ambiguity surrounds the correct definition of the term circulating. For  
5 example, Treasury has noted that the gold coins at issue are not currently circulating.

6 Defendants have not presented sufficient authority or evidence that the Internal  
7 Revenue Service may not tax the coins at issue at their fair market value. While Defendants  
8 cite to at least one Ninth Circuit case distinguishing between circulating and non-circulating  
9 coins, other Ninth Circuit cases have held—without distinguishing between currently  
10 circulating and non-circulating coins—that when legal tender exceeds its face value, such  
11 legal tender is property other than money, and thus taxpayers must value that legal tender at  
12 its fair market value. *See, e.g., Cordner*, 671 F.2d at 368. Accordingly, “[w]hen legal tender,  
13 by reason of its value to collectors or the intrinsic worth of its contents, has a fair market  
14 value in excess of its face value or tender, then it should be deemed property other than  
15 money . . . .” *Id.*

16 In *Joslin v. United States*, a case decided when Defendants claim silver dollars were  
17 still circulating, the Tenth Circuit stated the following:

18 Gross income certainly includes compensation for services. I.R.C. § 61(a)(1).  
19 If a taxpayer receives property other than cash as compensation, the taxpayer’s  
20 income is measured by the property’s fair market value. Treas.Reg. § 1.61-  
21 2(d)(1), T.D. 7554, 1978-2 C.B. 263. Unquestionably, a silver dollar has both  
22 a face value and a separate value reflecting the coin’s numismatic worth. To  
23 this extent a silver dollar combines the characteristics of cash and property.  
24 When a taxpayer bargains for and benefits from the higher market value of  
25 silver coins, he or she must include this amount in income. That silver dollars  
are designated legal tender with a nominal value of one dollar acceptable at  
the United States Treasury to discharge one dollar of debt, or exchangeable for  
a one dollar Federal Reserve note, does not require a different result. *See*  
Rev.Rul. 76-249, 1976-2 C.B. 21; *cf. Warren C. Cordner v. United States*,  
(1980-1) U.S. Tax Cas. (CCH) P 9441 (C.D.Cal.1980) (gold coin dividend

1       taxed at numismatic value); *California Fed. Life Ins. Co.* (1976) Tax  
2       Ct.Rep.Dec. (P.H.) § 76.8 (U.S. gold coins accepted as payment for Swiss  
3       francs are evaluated for tax purposes at their numismatic value); Rev.Rul. 78-  
4       360, 1978-2 C.B. 228 (silver coins held by decedent valued for estate tax  
5       purposes at their fair market value). In the instant case the taxpayer in effect  
6       has admitted and the IRS has agreed that the silver dollars, at the time of the  
7       transaction, had a fair market value of five times their face value. Under the  
8       facts of this case, the taxpayer cannot claim that he intended to benefit or  
9       actually benefitted only to the extent of the coins' face value.

6       666 F.2d 1306, 1307 (10th Cir. 1981). This case is identical. The coins at issue have a face  
7       value and a separate market value representing their numismatic worth. Defendants have  
8       bargained for and benefitted from the higher market value in this instance.<sup>2</sup> Accordingly,  
9       they must include such amount as income. Congress clearly had this in mind when they  
10      passed the Gold Bullion Act, from which the coins at issue were authorized. Pub. L. No. 99-  
11      185, 99 Stat. 1177, codified at 31 U.S.C. § 5112. When passing that legislation, Congress  
12      noted that "[t]he gold coins created by this act are legal tender of the United States—they are  
13      monetary instruments, in every sense of that concept, at their fair market value in terms of  
14      gold content." 131 Cong. Rec. H10528 (daily ed. Dec. 2, 1985) (statement of Rep. Lewis).

15      Defendants also argue that the Gold Bullion Act overruled the cases cited above.

16      However, as noted, some of these cases were decided well after that Act became law.

17      Defendants also argue that Treasury has usurped congressional authority. However,

---

19      <sup>2</sup>Indeed, whether the coins are reportable at their face or fair market value may ultimately  
20      be irrelevant in this case. The Government claims in some instances that Defendants attempted  
21      to evade taxes by accepting, for example, gold coins for performing services worth the gold  
22      coins' fair market value. The Government alleges that Defendants then exchanged such gold  
23      coins for federal reserve notes worth the coins' fair market value. Although Defendants received  
24      cash in the amount of the gold coins' fair market value, they allegedly reported income at the face  
25      value, or in some instances, failed to report any income at all. Regardless of how Defendants  
26      characterized their income, if such characterization was motivated by a desire to evade taxes,  
27      Defendants can be convicted for attempting to evade taxes. See *United States v. Jungles*, 903  
28      F.2d 468, 474-75 (7th Cir. 1990).

1 Congress has delegated the power to tax to the Internal Revenue Service, and the  
2 “responsibility for construing the [Internal Revenue] Code falls to the IRS. Since Congress  
3 cannot be expected to anticipate every conceivable problem that can arise or to carry out day-  
4 to-day oversight, it relies on the administrators and on the courts to implement the legislative  
5 will.” *Skinner v. Mid-America Pipeline Co.*, 490 U.S. 212, 222 (1989) (quoting *Bob Jones*  
6 *Univ. v. United States*, 461 U.S. 574, 596-97 (1983)). Defendants must include as income  
7 the coins’ fair market value.

## 8 **II. Motion for Clarification: What Defendants May Present at Trial**

9 In its prior Order, the Court noted that in *Cheek v. United States*, the Supreme  
10 Court held that “[w]illfulness, as construed by our prior decisions in criminal tax  
11 cases, requires the Government to prove that the law imposed a duty on the defendant,  
12 that the defendant knew of this duty, and that he voluntarily and intentionally violated  
13 that duty.” 498 U.S. 192, 201 (1991)). *Cheek* also held that a taxpayer who violates  
14 the tax law based on good faith ignorance of the law or an erroneous belief that he  
15 was not violating the tax code does not act “willfully,” even if the taxpayer’s belief is  
16 objectively unreasonable:

17 [I]f the Government proves actual knowledge of the pertinent legal duty, the  
18 prosecution, without more, has satisfied the knowledge component of the  
19 willfulness requirement. But carrying this burden requires negating a defendant’s  
20 claim of ignorance of the law or a claim that because of a misunderstanding of  
21 the law, he had a good-faith belief that he was not violating any of the provisions  
22 of the tax laws. This is so because one cannot be aware that the law imposes a  
23 duty upon him and yet be ignorant of it, misunderstand the law, or believe that  
24 the duty does not exist. In the end, the issue is whether, based on all the  
25 evidence, the Government has proved that the defendant was aware of the duty at  
issue, which cannot be true if the jury credits a good-faith misunderstanding and  
belief submission, whether or not the claimed belief or misunderstanding is  
objectively reasonable.

*Id.* at 202. This Court then ruled as follows in its prior Order:

1  
2 In the present case, Defendants' claims may not be objectively reasonable;  
3 nonetheless, pursuant to the above analysis, Defendants may argue that they  
4 violated the tax law based on good faith ignorance of the law or an erroneous  
5 belief that the law did not require Defendants to include as income the coins' fair  
6 market value. However, because the law clearly holds that the coins' fair  
7 market value was reportable income, they cannot argue that the law did not  
8 require them to report the difference between the coins' face and fair market  
9 values or that the tax law is somehow unconstitutional. Accordingly, the  
10 Court will not allow Defendants to present any arguments that the law allows  
11 them to exclude from income the coins' fair market values or to otherwise  
12 argue what the relevant tax law holds. Defendants may only present a good  
13 faith defense that they believed they could report the income as they did for  
14 the limited purpose of negating the relevant mens rea requirement, but  
15 Defendants cannot argue that their belief was actually correct.

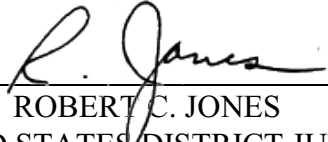
16 In their Motion, Defendants ask the Court to clarify this ruling. Although the Court  
17 believes its prior reading is clear, it takes this opportunity to make further comment. At trial,  
18 the Court will not allow either Defendants or the Government to argue to the jury what the  
19 relevant tax law is, or what it should be, by way of evidence or argument, contrary to any  
20 Court instruction on the law. The Court has the responsibility to instruct the jury as to what  
21 the relevant law entails. Thus, Defendants cannot argue to the jury that the law does not  
22 require them to report the gold coins at their fair market value. In addition, the Court will not  
23 allow Defendants to present evidence with the intent to persuade the jury that courts in so  
24 holding have illegally usurped congressional authority or otherwise misinterpreted the  
25 circulating versus non-circulating issue discussed above. However, although Defendants may  
not argue a contrary legal theory than that which the Court has decided, Defendants may  
present a good faith defense that they lacked the mens rea requirement of willfulness. In  
other words, assuming Defendants establish a proper evidentiary foundation, they may  
present evidence upon which they relied in establishing the fact they were not aware of their

1 duty under the relevant statutes at issue in this case.

2  
3  
4 **CONCLUSION**

5 Pursuant to the above analysis, the Court grants in part and denies in part Defendants'  
6 Motion. The Court denies Defendants' request to reconsider the relevant tax law at issue in  
7 this Order. However, the Court grants Defendants' request to clarify what they may or may  
8 not present at trial to establish their good faith defense. Accordingly, IT IS HEREBY  
9 ORDERED that Defendants' Motion is *granted* in part and *denied* in part. IT IS FURTHER  
10 ORDERED that all Defendants' Motions for Joinder are *granted*.

11 DATED: May 22, 2007.

12  
13   
14 \_\_\_\_\_  
15 ROBERT C. JONES  
16 UNITED STATES DISTRICT JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25